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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,898	11/13/2003	Gregory J. Saxton	DBH:0560.074-006	7752

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EXAMINER	
JULES, FRANTZ F	

ART UNIT	PAPER NUMBER
3617	

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/706,898	SAXTON ET AL.	
	Examiner	Art Unit	
	Frantz F. Jules	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11132003*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 7-11 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-5 of prior U.S. Patent No. 6,647,895. This is a double patenting rejection.

Drawings

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> **(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.**

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al (US 6, 470,808) in view of Weiner (US 6,183,176) and Kennedy (US 5,150,940).

Claims 1-6

Clark et al disclose in figs. 4-10 a car body in a freight carrying, center beam railroad car comprising a cargo supporting floor (26) extending substantially between the opposite sides and the opposite ends; and a center beam (12) extending along said body, said center beam (12) including a center sill (20) extending along the body and a top chord (32) extending parallel with ad spaced upwardly above and apart from the center sill (20), said top chord being adapted to support a load placed on the floor.

Clark et al disclose all of the features as listed above but does not disclose a car body in a freight carrying railroad car having a top chord with a selectively affixable cover member, which is a low coefficient of friction polyethylene to facilitate displacement of a cargo supported by the floor while resisting lateral displacement thereof. The general concept of using a low coefficient of friction material on a load support structure to resist lateral displacement of a load supported by a floor is well known in the art as illustrated by Weiner which discloses in figs. 1-5 a low coefficient of friction material (52) on a load support structure (12) to resist lateral displacement of a load (62) supported by a floor or a rail vehicle. Also, the general concept of using a selectively affixable cover member, which is a low coefficient of friction polyethylene on a load bearing rail of a vehicle is well known in the art as illustrated by Kennedy which disclose the use of a flexible affixable member (16), which is a low coefficient friction polyethylene on a load supporting rail member (14), see abstract section, see col. 2, lines 36-49. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Clark et al to include the use of a low coefficient of friction material on a load support structure to resist lateral displacement of a load supported by a floor in his

advantageous rail car body as taught by Weiner in order to provide means for stabilizing the load while reducing the risk of damage to the structure. In addition, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Clark et al to include the use of a selectively affixable cover member, which is a low coefficient of friction polyethylene to the top chord of his center beam as taught by Kennedy in order to provide a mechanism for dissipation of both mechanical and vibrational energy in the car body during transportation of a load, prevent damage to the load.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al (US 6, 470,808) in view of Weiner (US 6,183,176) and Crane et al (US 5,308,675).

Claims 12-14

Clark et al disclose in figs. 4-10 a car body in a freight carrying, center beam railroad car comprising a cargo supporting floor (26) extending substantially between the opposite sides and the opposite ends; and a center beam (12) extending along said body, said center beam (12) including a center sill (20) extending along the body and a top chord (32) extending parallel with ad spaced upwardly above and apart from the center sill (20), said top chord being adapted to support a load placed on the floor.

Clark et al disclose all of the features as listed above but does not disclose a car body in a freight carrying railroad car having a top chord having a selectively affixable cover member which is a low coefficient of friction polyethylene comprising a web, a pair of sides connected to the web and legs projecting from the sides to interfere with a bottom wall of the top chord to facilitate displacement of a cargo supported by the floor while

resisting lateral displacement thereof. The general concept of using a low coefficient of friction material on a load support structure to resist lateral displacement of a load supported by a floor is well known in the art as illustrated by Weiner which discloses in figs. 1-5 a low coefficient of friction material (52) on a load support structure (12) to resist lateral displacement of a load (62) supported by a floor or a rail vehicle. Also, the general concept of using a selectively affixable cover member which is a low coefficient of friction polyethylene comprising a web, a pair of sides connected to the web and legs projecting from the sides to interfere with a bottom wall of the top chord, on a load bearing member is well known in the art as illustrated by Crane et al which disclose the use of a flexible affixable member (21t) comprising a web (24t), a pair of sides (24S) connected to the web (24t) and legs (24ul, 24ur) projecting from the sides to interfere with a bottom wall of the top chord, which is a low coefficient friction polyethylene on a load supporting member (24), see abstract section, see column 4, lines 43-54, column 7, lines 40-45. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Clark et al to include the use of a low coefficient of friction material on a load support structure to resist lateral displacement of a load supported by a floor in his advantageous rail car body as taught by Weiner in order to provide means for stabilizing the load while reducing the risk of damage to the structure. In addition, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Clark et al to include the use of a selectively affixable cover member which is a low coefficient of friction polyethylene comprising a web, a pair of sides connected to the web and legs projecting from the sides to interfere with a bottom wall of the top

chord to the top chord of his center beam as taught by Crane et al in order to provide a mechanism for dissipation of both mechanical and vibrational energy in the car body during transportation of a load, prevent loosening of the flexible cover member.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Rollin et al, Simmons, Brandt et al, Gentle are cited to show related vehicles comprising top rail having a cover.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Frantz F. Jules
Examiner
Art Unit 3617

FFJ

March 8, 2004

FRANTZ F. JULES
PATENT EXAMINER